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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16
17 **SECURITIES AND EXCHANGE**
18 **COMMISSION,**

19 Plaintiff,

20 vs.

21 JAMMIN' JAVA CORP., dba MARLEY
22 COFFEE, SHANE G. WHITTLE,
23 WAYNE S. P. WEAVER, MICHAEL K.
24 SUN, RENE BERLINGER, STEPHEN B.
25 WHEATLEY, KEVIN P. MILLER,
MOHAMMED A. AL-BARWANI,
ALEXANDER J. HUNTER, and
THOMAS E. HUNTER,

26 Defendants.
27
28

Case No. 2:15-CV-08921 SVW (MRWx)

**MOTION FOR ENTRY OF FINAL
JUDGMENT BY CONSENT AS TO
DEFENDANT JAMMIN' JAVA**

Hearing Date: June 27, 2016
Time: 1:30 pm
Hon. Stephen V. Wilson
Courtroom 6

1 Based on the Consent of Defendant Jammin' Java Corp. ("Jammin' Java")
2 attached as Exhibit 1, and pursuant to Rule 58(d) of the Federal Rules of Civil
3 Procedure, Plaintiff, the U.S. Securities and Exchange Commission ("Commission"),
4 respectfully requests that this Court enter a final judgment against Jammin' Java in
5 the form attached as Exhibit 2 ("Proposed Judgment").

6 1. On November 17, 2015, the Commission filed a complaint against
7 Defendant Jammin' Java and nine individuals for violations of the federal securities
8 laws in connection with a \$78 million pump-and-dump scheme. (Dkt. No. 1.)

9 2. The Complaint did not charge Jammin' Java with fraud, but alleged that
10 Jammin' Java violated Sections 5(a) and 5(c) of the Securities Act of 1933
11 ("Securities Act"), 15 U.S.C. § 77e(a) and (c), by directly or indirectly facilitating an
12 unregistered distribution of its stock to the public. To establish a *prima facie* case of
13 a Section 5 violation, the Commission must show (1) that no registration statement
14 was in effect or filed as to the securities involved; (2) that the defendant directly or
15 indirectly sold, offered to sell, or offered to buy the securities; and (3) that the sale or
16 offer was made through the use of interstate facilities or the mails. To effectuate the
17 purpose of the registration provisions, no proof of scienter is required. Once the
18 Commission demonstrates a *prima facie* case of Section 5 liability, the alleged
19 violator bears the burden of establishing a valid exemption.

20 3. As to Jammin' Java, the Complaint sought an order of permanent
21 injunction, disgorgement and prejudgment interest, and civil monetary penalties.

22 4. The Commission alleged that no registration statement was filed or in
23 effect with any of the offers or sales of Jammin' Java stock to the public.

24 5. The Commission further alleged that Jammin' Java directly or indirectly
25 sold shares as part of the unregistered distribution. Specifically, the Commission
26 alleged that, through its affiliate and statutory underwriters, Jammin' Java distributed
27 over 45 million shares to the public. In addition, the Commission alleged that
28 Jammin' Java took various steps to facilitate the distribution.

1 6. The Commission also alleged that the sales or offers were made through
2 the use of interstate facilities or the mails.

3 7. According to the Complaint, Jammin' Java received \$2.5 million in
4 connection with the illegal distribution.

5 8. Jammin' Java has agreed to resolve this matter with the Commission by
6 consenting to the relief requested in the Proposed Judgment.

7 9. In Paragraph 1 of the Consent, Jammin' Java acknowledges having been
8 served with the complaint in this action and admits the Court's jurisdiction over it and
9 over the subject matter of this action.

10 10. The Proposed Judgment permanently enjoins Jammin' Java from
11 violating Sections 5(a) and 5(c) of the Securities Act and orders it to disgorge
12 \$700,000, composed of \$605,331 in disgorgement and \$94,669 in prejudgment
13 interest.

14 11. As reflected in the Consent, the Proposed Judgment has been reviewed
15 by Jammin' Java and its counsel and Jammin' Java agrees to the relief identified
16 therein.

17 12. Jammin' Java previously answered the Complaint on January 19, 2016.
18 (Dkt. No. 15). Pursuant to Paragraph 10 of its Consent, Jammin' Java withdraws its
19 Answer.

20 13. The Commission's case against the remaining Defendants will continue.

21 14. Under Rule 54(b) of the Federal Rules of Civil Procedure, there is no
22 just reason to delay entry of final judgment as to Jammin' Java. Entry of the
23 Proposed Judgment will resolve all claims against Jammin' Java in this action. There
24 additionally is little risk of piecemeal appeals as Jammin' Java has waived its right to
25 appeal from this final judgment, as reflected in Exhibit 1.

26 15. Entry of the Proposed Judgment will conserve judicial resources and
27 save the Commission and Jammin' Java the resources and expense of continued
28 discovery and litigation. The Proposed Judgment will likewise provide Jammin' Java

1 with certainty—reducing the risk of a larger monetary judgment that could affect the
2 company and its shareholders.

3 WHEREFORE, because the Proposed Judgment by consent will resolve the
4 claims against Jammin Java, reduce the risk of harm to Jammin’ Java and its
5 shareholders, and conserve judicial resources, the Commission respectfully requests
6 that the Court find that there is no just reason to delay entry of final judgment and
7 enter the Proposed Judgment as to Defendant Jammin’ Java.

8
9 Dated: May 31, 2016

Respectfully submitted,

10 /s/Timothy S. Leiman

11 Timothy S. Leiman

12 U.S. Securities and Exchange Commission

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CERTIFICATE OF SERVICE

Timothy S. Leiman hereby certifies that he caused the foregoing document to be electronically filed through the Court's CM/ECF system on May 31, 2016, which automatically sends an electronic copy of the document to all counsel of record. The remaining Defendants who have not entered appearances in this matter have been served as follows:

Wayne Weaver
By e-mail to:
Marc S. Harris
mharris@scheperkim.com
Counsel to Defendant Weaver

s/Timothy S. Leiman